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From: "Ted Hudson" <Ted\_Hudson@blm.gov>  
To: "Reyes, Janis C." <Janis\_C.\_Reyes@omb.eop.gov>  
Sent: Tuesday, May 29, 2007 07:34 AM  
Subject: Critical Habitat for Peirson's Milk Vetch

The Director of the Bureau of Land Management concurs in the statement submitted by the California State Office on the proposed rule to revise critical habitat for Peirson's milk-vetch (*Astragalus magdalenae* var. *peirsonii*), which follows immediately.

The California Bureau of Land Management (CA-BLM) has reviewed the advance copy of the proposed rule and the associated draft economic analysis that were provided to us for review. CA-BLM has coordinated with the Fish and Wildlife Service (FWS) on this proposal. CA-BLM will provide substantial comments to FWS during the public comment period provided for in the proposed rule. Our comments below on this draft proposed rule will highlight only the major points that we will be elaborating on more fully through our later comments on the official proposed rule.

It is important to realize that FWS is under court order to publish a final critical habitat designation for Peirson's milk-vetch by February 1, 2008. In order to meet this deadline, FWS has set an internal deadline of the end of May, 2007, for publication of the proposed rule. This same court order vacated and remanded BLM's 2005 Record of Decision on the Imperial Sand Dunes Recreation Area Management Plan (ISDRAMP) and FWS's January 2005 Biological Opinion on the ISDRAMP. Before CA-BLM can draft a new ISDRAMP, we will have to know the area designated as critical habitat in the final rule. CA-BLM then intends to prepare another draft plan and EIS and to engage in Endangered Species Act Section 7 consultation with FWS on the draft plan.

The process used by FWS to delineate and map the proposed critical habitat appears sound. BLM's 2005 survey data was used to determine critical habitat boundaries. Both FWS and BLM believe the 2005 data to be the best available information on the distribution and range of Peirson's milk-vetch. Though FWS could have chosen a different cutoff number to use in determining core areas, we do not have any better biological rationale than FWS to support a different number. We think the 100 plants per hectare value used by FWS is reasonable.

Our biggest concern is with the potential management problems BLM will face in developing a new management plan to incorporate and conserve critical habitat. Although the 16,245 acres proposed as critical habitat in this draft rule is a significant reduction from the 52,780 acres proposed as critical habitat in the August 5, 2003, proposed rule, the fact that the proposed critical habitat spans a nearly contiguous north to south band along the western part of the Algodones (Imperial) Sand Dunes poses serious challenges to off-highway vehicle (OHV) management in the Dunes. All of the management areas of the Dunes except for Dune Buggy Flat contain critical habitat (although the critical habitat acreage in the Glamis and Buttercup management areas is relatively small). The proposed critical habitat in the Gecko, Glamis, and

Ogilby management areas will provide the biggest management challenges for BLM, because these areas are popular OHV use areas. In our official comments on the proposed critical habitat, we will likely propose that all or at least large parts of the proposed critical habitat in these management areas be excluded for reasons of manageability and economic impacts to OHV users.

Another issue is that the proposed critical habitat has highly irregular boundaries. In order to implement OHV closures or management restrictions in the critical habitat areas we would have to draw straight lines around the critical habitat areas. This would make the area actually protected considerably larger, a fact that was not taken into account in the draft economic analysis. The methodology used to determine post critical habitat-designation welfare losses resulting from restrictions on OHV use is given on pages 3-24 and 3-25 of the draft economic analysis. That methodology involves calculating the number of vehicle trips in the proposed critical habitat portion of each management area by multiplying the percent of the management area proposed for critical habitat by the total number of vehicle trips in the management area. The resulting number of vehicle trips per critical habitat area is then considered to be lost under the scenario in which the proposed critical habitat is closed to OHV use. This methodology, however, underestimates the loss because the area actually closed would in fact be larger due to the boundary issues discussed above.

One factual error in the proposed rule appears in the second sentence of the second paragraph on page 11. Pursuant to the 2000 settlement agreement, BLM agreed to establish 5 interim closure areas within the Algodones Dunes, not 4 as stated in the proposed rule.

As stated above, we will provide much more detailed comments on the proposed rule following its publication in the Federal Register. Questions regarding the above comments may be directed to John Willoughby at (916) 978-4638.

Thank you for the opportunity to comment on this advance copy of the proposed rule.

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